

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Maria Antunez,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-16-01072-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Maria Antunez’s Motion for Attorneys’ Fees
16 pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, (the “Motion,”
17 Doc. 23). Defendant Acting Commissioner of the Social Security Administration (the
18 “Commissioner”) has filed her Response, (Doc. 24). The Court now rules on the Motion.

19 **I. BACKGROUND**

20 Plaintiff applied for Social Security disability benefits in October 2012. (Tr. 10).¹
21 Plaintiff’s applications were denied initially on March 20, 2013 and upon reconsideration
22 on August 26, 2013. (Tr. 10). After a hearing held on July 30, 2014, (Tr. 23–43), the
23 Administrative Law Judge (the “ALJ”) denied Plaintiff’s applications. (Tr. 17).

24 On April 15, 2016, Plaintiff commenced suit pursuant to 42 U.S.C. §§ 405(g) and
25 1383(c)(3) seeking a review of the ALJ’s denial of her applications for disability
26 insurance benefits and supplemental security income. (Doc. 1 at 1). This Court held that

27
28 ¹ Citations to “Tr.” are to the certified administrative transcript of record.
(Doc. 13).

1 the ALJ committed harmful error by concluding that Plaintiff could perform past work.
2 (Doc. 21 at 2). As a result, this Court reversed and remanded the ALJ's decision for "a
3 new administrative hearing, additional vocational expert testimony, and a new ALJ
4 decision" addressing the ALJ's errors related to Plaintiff's past work. (*Id.* at 3–4). This
5 Court did not reach a decision on Plaintiff's two additional claims of error. (*Id.* at 3).

6 After the reversal, Plaintiff filed the current Motion requesting \$6,345.07 in
7 attorneys' fees and costs under the EAJA. (Doc. 23). The Commissioner's Response
8 states that she "finds no basis for objection" and "defer[s] to the Court's assessment of
9 the matter." (Doc. 24 at 1).

10 **II. LEGAL STANDARD**

11 The EAJA allows "a prevailing party other than the United States fees and other
12 expenses . . . incurred by that party in any civil action . . . unless the court finds that the
13 position of the United States was substantially justified or that special circumstances
14 make an award unjust." 28 U.S.C. § 2412(d)(1)(A) (2012). An applicant for disability
15 benefits becomes a prevailing party for the purposes of the EAJA if the denial of her
16 benefits is reversed and remanded regardless of whether disability benefits are ultimately
17 awarded. *Shalala v. Schaefer*, 509 U.S. 292, 300–02 (1993).

18 The "position of the United States" includes both its litigating position and the
19 "action or failure to act by the agency upon which the civil action is based."
20 28 U.S.C. § 2412(d)(2)(D). To be substantially justified, a position must be "justified in
21 substance or in the main—that is, justified to a degree that could satisfy a reasonable
22 person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (holding that "substantially
23 justified" means having a reasonable basis both in law and fact). In EAJA actions, the
24 government bears the burden of proving that its position was substantially justified.
25 *Gonzales v. Free Speech Coalition*, 408 F.3d 613, 618 (9th Cir. 2005).

26 When analyzing the government's position for substantial justification, the Court's
27 inquiry should be focused on the issue that was the basis for remand and not the merits of
28 Plaintiff's claim in its entirety or the ultimate disability determination. *Flores v. Shalala*,

1 49 F.3d 562, 569 (9th Cir. 2008); *see also Corbin v. Apfel*, 149 F.3d 1051, 1052
2 (9th Cir. 1998) (“The government’s position must be substantially justified at each stage
3 of the proceedings.” (citation and quotation marks omitted)).

4 **III. ANALYSIS**

5 Plaintiff requests attorneys’ and paralegals’ fees of \$6,328.45, and costs of \$16.62.
6 (Doc. 23 at 2). Plaintiff also asks that “fees be made payable to the attorney.” (*Id.*). The
7 Commissioner does not oppose Plaintiff’s Motion. (Doc. 24).

8 The Court could “treat the government’s non-opposition as constituting a failure to
9 offer a basis for finding of substantial justification and, thus, a failure to carry its burden
10 of proof.” *Gwaduri v. INS*, 362 F.3d 1144, 1146 (9th Cir. 2004). However, the Court
11 should exercise discretion in awarding fees under EAJA and “has an independent
12 obligation to ensure that the request is reasonable.” *Keyser v. Astrue*, No. 08-1268-CL,
13 2012 WL 78461, at *3 (D. Or. Jan. 10, 2012); *see also Webb v. Ada Cty.*,
14 195 F.3d 524, 527 (9th Cir. 1999) (recognizing that a district court possesses
15 “considerable discretion” in determining the reasonableness of a fee award). Accordingly,
16 the Court reviews both the reasonableness of Plaintiff’s request and whether Plaintiff’s
17 counsel should receive the costs and fees directly.

18 **A. Attorneys’ Fees & Costs**

19 Plaintiff claims that an EAJA award is available as: (1) Plaintiff’s net worth did
20 not exceed \$2,000,000 at the time the action was filed; (2) Plaintiff was a “prevailing
21 party” in a case against the U.S. Government; and (3) the position of the United States
22 was not substantially justified. (Doc. 23 at 2). Because the Commissioner does not argue
23 that her position was substantially justified, the Court concludes that Plaintiff is entitled
24 to all reasonable attorneys’ fees and need only analyze whether Plaintiff’s requested
25 attorneys’ fees are reasonable. *See Cudia v. Astrue*, No. 2:08-cv-01676 KJN,
26 2011 WL 6780907, at *8 (E.D. Cal. Dec. 27, 2011).

27 Plaintiff requests \$5,568.45 for 28.9 hours of attorney work, \$760.00 for 7.6 hours
28 of paralegal work, and \$16.62 in costs, for a total award of \$6,345.07. (*See* Doc. 23-1

1 at 2–3). Courts within the Ninth Circuit have “recognize[d] a range of 20–40 hours to be
2 ‘a reasonable amount of time to spend on a social security disability case that does not
3 present particular difficulty.’” *Syas v. Astrue*, No. 03:10-cv-06391-HU,
4 2012 WL 3144041, at *2 (D. Or. June 15, 2012) (quoting *Harden v. Comm’r Soc. Sec.*
5 *Admin.*, 497 F. Supp. 2d 1214, 1215–16 (D. Or. 2007)). Here, Plaintiff’s requested hours
6 fall within the spectrum of reasonableness. Further, the Court’s review of the attorneys’
7 ledger reveals that Plaintiff’s counsel did not spend an unreasonable amount of time on
8 any particular task while preparing Plaintiff’s case. (*See* Doc. 23-2). Accordingly, the
9 Court awards attorneys’ fees and costs in the amount of \$6,345.07.

10 **B. To Whom Is Award Paid**

11 Plaintiff also motions for this Court to award attorneys’ fees and costs totaling
12 \$6,345.07 directly to Plaintiff’s counsel under 28 U.S.C. § 2412. (*See* Doc. 23 at 2). The
13 record includes an affidavit from Plaintiff asserting that she “hereby agree[s] to waive
14 direct payment of the EAJA fees and assign said fees to be paid directly to my attorney.”
15 (Doc. 23-6 at 2).

16 “The fact that the [EAJA] awards to the prevailing party fees in which her attorney
17 may have a beneficial interest or a contractual right does not,” however, “establish that
18 the statute ‘awards’ the fees directly to the attorney.” *Astrue v. Ratliff*, 560 U.S. 586, 593
19 (2010). Instead, the EAJA “‘awards’ the fees to the litigant, and thus subjects them to a
20 federal administrative offset if the litigant has outstanding federal debts.” *Id.* Here,
21 Plaintiff agreed to assign all rights to any EAJA fee award to her counsel. (Doc. 23-6
22 at 2).

23 Nonetheless, the Anti-Assignment Act (“the Act”) forbids the assignment of
24 claims against the United States unless certain requirements are satisfied.
25 31 U.S.C. § 3727 (2012). Namely, an assignment is permitted only: (1) “after a claim is
26 allowed”; (2) when “the amount of the claim is decided”; and (3) when “a warrant for
27 payment of the claim has been issued.” *Id.* § 3727(b). In this case, Plaintiff’s assignment
28 was executed on April 8, 2016, well before any EAJA claim was allowed or the amount

1 decided. (Doc. 23-6 at 2). Because the assignment does not meet the Act's requirements,
2 the Court concludes that the assignment is invalid as contrary to the Act. In any event, the
3 determination of whether to pay Plaintiff's counsel directly "must be made *by the*
4 *Commissioner* after confirming that Plaintiff has assigned her right to fees and does not
5 owe a debt that is subject to offset under the Treasury Offset Program." *Zamora v.*
6 *Colvin*, No. CV-13-01970-PHX-DGC, 2014 WL 4388537, at *2 (D. Ariz. Sept. 5, 2014)
7 (emphasis added) (citing *Ratliff*, 560 U.S. at 594). Consequently, the Court will deny
8 Plaintiff's request for the EAJA fees to be made payable directly to her counsel.

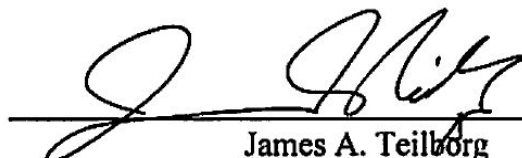
9 **IV. CONCLUSION**

10 Based on the foregoing,

11 **IT IS ORDERED** that Plaintiff's Motion for an Award of Attorneys' Fees under
12 the EAJA, (Doc. 23), is **GRANTED** to the extent it seeks \$6,345.07 in attorneys' fees
13 and costs pursuant to the EAJA. The Motion is **DENIED** to the extent it requests that the
14 fees be made payable directly to Plaintiff's counsel.

15 **IT IS FURTHER ORDERED** that this award shall be payable directly to
16 Plaintiff and is subject to offset to satisfy any pre-existing debt that Plaintiff owes the
17 United States pursuant to *Ratliff*, 560 U.S. 586.

18 Dated this 13th day of September, 2017.

19
20
21
22 
23 James A. Teilborg
24 Senior United States District Judge
25
26
27
28